

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

MITCHELL SIMMER,)
)
)
Plaintiff,))
)
v.) Case No. CIV-21-361-GLJ
)
)
KILOLO KIJAKAZI, Acting)
Commissioner of the Social)
Security Administration,)
)
)
Defendant.))

**OPINION AND ORDER AWARDING
ATTORNEY'S FEES TO THE PLAINTIFF UNDER THE EAJA**

Plaintiff Mitchell Simmer was the prevailing party in this action under the Social Security Act. The Government has now filed a Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act, indicating that the parties have stipulated to attorney fees in the amount of \$7,475.00. *See* Docket No. 21.

Upon review of the record herein, the Court finds that the agreed amount is reasonable and that the Commissioner should be ordered to pay it to the Plaintiff as the prevailing party herein. *See* 28 U.S.C. § 2412(d)(1)(A) (“Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort)[.]”); *see also Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) (“The EAJA therefore permits

attorney's fees reimbursement to financially eligible prevailing parties, who make a proper application, and not to their attorneys.”).

Accordingly, IT IS ORDERED that the Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act [Docket No. 21] is hereby GRANTED to the Plaintiff as the prevailing party herein. IT IS FURTHER ORDERED that if the Plaintiff's attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 1st day of March, 2023.



GERALD L. JACKSON
UNITED STATES MAGISTRATE JUDGE